

SENATE BILL 4075

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 29
and Title 68, relative to long term care facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 26, is amended by adding
the following new part thereto:

§ 29-26-301.

As used in this part, unless the context otherwise requires:

(1) "Economic loss" means the costs of reasonable and necessary medical
care, rehabilitation services, custodial care, funeral expenses and loss of earned
income;

(2) "Health related services" means any service or activity:

(A) Where the manner of performance is based on the medical condition
of the patient and is performed by a person who has been trained or instructed
on the performance of such service or activity and the person's performance of
such service or activity is within the scope of the person's employment; or

(B) That could be performed by the patient but for the patient's medical
condition and is performed by a person who has been trained or instructed on the
performance of such service or activity and the person's performance of such
service or activity is within the scope of the person's employment.

(3) "Long-term care facility" means any nursing home licensed under title 68,
and its employees, owners, managers, licensees, affiliates and any person or entity
participating in or exercising control over the care rendered at the long-term care facility,
including the medical director when acting in the capacity of a medical director but
excluding a treating physician;

(4) “Long-term care tort action” means any civil action in any forum for any damages for or related to injury or death of a long-term care facility patient brought against a long-term care facility;

(5) “Non-economic loss” means non-pecuniary harm of any nature that results from an injury, death, or loss to person, including but not limited to, pain and suffering, mental anguish, and loss of enjoyment of life, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, or any other intangible loss.

§ 29-26-302.

Any long-term care tort action related to the provision of health related services shall be brought solely as a medical malpractice action pursuant to §§ 29-26-115 – 29-26-120.

§ 29-26-303.

(a) A long-term care facility may require any patient as a condition of admission to enter into an arbitration agreement as part of the patient admission process, but may not discharge a patient, once admitted, for failure to enter into one.

(b) Any person designated, or any person who is authorized to be designated, as a surrogate pursuant to § 68-11-1806, or any agent, guardian, conservator, or attorney-in-fact appointed by a court or designated by the patient as having authority to make health care or legal decisions for a patient has the authority to enter into any arbitration agreement with a long-term care facility on the patient’s behalf.

§ 29-26-304.

(a) There is no limit on the amount of economic loss that can be recovered in a long-term care tort action.

(b) The maximum amount of non-economic loss recoverable in any long-term care tort action for injury or death is three hundred thousand dollars (\$300,000).

(c) All occurrences which are or could have been asserted in a long-term care tort action shall constitute one (1) long-term care tort action for purposes of this section.

(d) For purposes of this section, the maximum amount of punitive damages recoverable in a long-term care tort action is limited to two (2) times the amount of the judgment entered by a court for non-economic losses in the action.

SECTION 2.

(a) Sections §§ 29-26-302 and 29-26-304, of the amendatory language of SECTION 1 shall take effect upon becoming law, the public welfare requiring it and shall apply to any long term tort action in which a complaint has not been filed prior to the effective date of this act.

(b) Section § 29-26-303 of the amendatory language of SECTION 1 shall take effect upon becoming law, the public welfare requiring it and shall apply to any arbitration agreement entered into, whether prior to or after the effective date of this act.

(c) All other provisions of this act shall take effect upon becoming law, the public welfare requiring it.